IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2006

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN

AND

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.No.1675 of 2000

Tvl.Tamil Nadu State Transport
Corporation (Villupuram Division-III)
Ltd., Kancheepuram .. Appellant

-Vs-

1. The State Transport Authority
   Chepauk, Chennai 600 005

2. The State Transport Appellate
   Tribunal, Chennai

3. Tmt.Vyayammal
   Prop. Sri Bharathi Roadways
   24, Sundar Iyer Street
   Arakkonam .. Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order dated 30.8.2000 made in W.P.No.14769 of 2000 filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for Records pertaining to the proceedings on the file of 2nd Respondent in Appeal No.194/90 dt. 5.12.90 and quash the same.

For Appellant :: Mr.K.Alagirisamy
Senior Counsel for
Mr.R.Balasubramaniam

For Respondents :: Mr.A.Arumugham
Addl. Government Pleader
for R1
Mr.M.Palani for R2

JUDGMENT

D.MURUGESAN, J.

The correctness of the order in the writ petition is questioned by the Tamil Nadu State Transport Corporation (Villupuram Division-III) Ltd., Kancheepuram in this appeal.

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2. Following are the few facts giving rise to the present appeal:-

The third respondent/writ petitioner (hereinafter referred to as the "operator") is a permit holder to operate the stage carriage bearing Regn.No.TAJ 5607 on the inter-state route Tirupathi to Arakkonam with five singles per day. A portion of the route in question is a scheme route and the route is also covered by the inter-state agreement in G.O.Ms.No.1000, Home dated 3.6.75 of the State of Tamil Nadu and in G.O.No.715, Home dated 2.6.75 of the State of Andhra Pradesh. As per the provisions of the scheme, a minimum of 8 permit/buses upto a maximum of 14 and the minimum of 24 singles upto a maximum of 48 singles were allowed and the 48 singles included the five singles allowed to the operator.

3. The operator made an application to the State Transport Authority, Andhra Pradesh for variation by way of inclusion of an additional vehicle to perform two singles with the same stage carriage permit and the said application was allowed by the State Transport Authority, Andhra Pradesh on 25.6.85. The operator thereafter applied to the State Transport Authority, Tamil Nadu on 19.10.87 for counter-signature. While the said application was pending, Motor Vehicles Act, 1988 (hereinafter referred to as the "new Act") came into force with effect from 1.7.89. As the application for counter-signature was kept pending, the operator approached this Court in W.P.No.14038 of 1989 seeking for a direction to the State Transport Authority, Tamil Nadu to dispose of the said application and the said writ petition was ordered on 6.3.90. Pursuant to the direction of this Court, the application was notified under Section 57 (3) of the Motor Vehicles Act, 1939 (hereinafter referred to as the "old Act"). Only one representation was received from Thiru K.Ramachandra Naidu of Tirupathi to the effect that the route between Arakkonam and Tirupathi was well served and there was no provision in the inter-state agreement for grant of counter-signature for inclusion of an additional vehicle. Though a hearing was held on 23.4.90, the said objector did not attend the hearing. Nevertheless, the application came to be rejected by the State Transport Authority, Tamil Nadu in its order dated 26.4.90 on the ground that under Section 72(2) of the new Act, there is no provision for allowing one more vehicle to be operated on a single permit. The Authority further found that as per Section 80(3) of the new Act, no variation for inclusion of one more vehicle could be granted and the provision does not contemplate for such variation. The Authority also found that the route from Tiruttani to Tirupathi overlapped the approved scheme from Madras to Tirupathi ordered in G.O.Ms.No.293, Home dated 13.2.74 and published in the Tamil Nadu Government Gazette on 13.3.74. In terms of the judgment of the Supreme Court in Pandiyan Roadways Corporation Limited v. M.A.Egappan reported in AIR 1987 SC 958, no persons other than those specifically authorised by the terms of the scheme can be allowed to operate on the route or sector of the notified route.

4. Questioning the above order, the operator preferred an appeal before the State Transport Appellate Tribunal, Chennai and the said appeal was allowed by the Appellate Tribunal in its order dated 5.12.90. The Tribunal concurred with the operator on the ground that in terms of Section 72(2) and Section 80(3) of the new Act, the variation could be granted on a single permit to operate one more vehicle on the same route. As the said order of the Tribunal was not implemented, the operator filed W.P.No.21207 of 1993 seeking for a direction to implement the said order.

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This Court, by order dated 19.3.94, directed the State Transport Authority to implement the order of the Tribunal. Accordingly, the State Transport Authority passed orders granting counter-signature on 23.8.2000. Aggrieved by the said order, the appellant-Corporation filed the writ petition. By the impugned order dated 30.8.2000, the learned single Judge dismissed the writ petition on the ground that "when the order was passed, admittedly, the petitioner/Corporation was not in existence and came into existence only in the year 1992. Merely because the said order is going to be implemented, now it cannot be a ground to challenge the order after 10 years". The correctness of the said order is questioned in this appeal.

5. We have heard at length Mr.K.Alagirisamy, the learned Senior Counsel appearing for the Corporation and Mr.M.Palani, the learned counsel appearing for the operator.

6. Insofar as the delay and laches, the learned Senior Counsel has submitted that the appellant being the Transport Corporation incorporated in the year 1992 came to know of the order of the Appellate Tribunal only when the State Transport Authority had granted counter-signature in its order dated 23.8.2000 and immediately thereafter, without any delay, the writ petition was filed on 28.8.2000, within five days from the date of the order of the State Transport Authority granting counter-signature. As the appellant is the State Transport Corporation, while considering the delay, the Court should keep in mind the public interest, especially when the challenge to the variation is made on legal grounds, and the challenge should not be rejected solely on the ground of delay. On merits, the learned Senior Counsel has submitted that under the new Act, there is no provision for the grant of variation by including one more vehicle on the same permit and in the absence of any provision, the order of the Appellate Tribunal granting counter-signature is totally contrary to the statute. He has also submitted that the grant of variation would amount to the grant of fresh permit and in the absence of any provision for the grant of variation to operate more than one vehicle on the same permit under Section 72 of the new Act, the order of the State Transport Appellate Tribunal is bad in law.

7. Per contra, Mr.M.Palani, the learned counsel appearing for the operator has submitted that the Corporation has approached the Court after a lapse of 12 years and even if the order is illegal, it cannot be questioned when there is inordinate and unexplained delay. He has further submitted that at the time when the variation was granted by the State Transport Authority, Andhra Pradesh, Pattukkottai Azhagiri Transport Corporation Ltd., was only operating their vehicles on the scheme route. On bifurcation, the said Corporation on the route in question became Dr.MGR Transport Corporation Ltd. Thereafter only, in the year 1992, the Tamil Nadu State Transport Corporation Ltd., was incorporated by merging some of the Corporations including the Dr.MGR Transport Corporation Ltd. After the notification was made on the application for variation under Section 57(3) of the old Act, the Pattukkottai Azhagiri Transport Corporation Ltd., did not make any objection and therefore, in terms of Section 57(4), even Pattukkottai Azhagiri Transport Corporation Ltd., cannot question the variation. In the absence of any objection by the then Corporation, the present appellant-Corporation, having stepped into the shoes of Pattukkottai Transport Corporation Ltd., cannot be considered

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to be an operator aggrieved by the grant of variation. The learned counsel has further submitted that in terms of Section 70 of the new Act, variation by way of additional vehicle is also permissible. Insofar as the contention of the appellant-Corporation that the grant of variation would amount to the grant of fresh permit, the learned counsel has submitted that in view of the judgment of the Supreme Court in Karnataka State Road Transport Corporation, Bangalore v. B.A.Jayaram and others reported in AIR 1984 SC 790, grant of variation would not amount to grant of new permit. In this context, he also relied upon the judgment of the Supreme Court in Karnataka State Road Transport Corporation, Bangalore and others v. Karnataka State Transport Authority, Bangalore and others reported in AIR 1987 SC 711. Finally, the learned counsel has submitted that in view of the enactment of the Tamil Nadu Act 41 of 1992, all variations granted are saved and therefore, the operator is entitled to the counter-signature under the new Act. Hence the learned counsel submitted that the order in the writ petition is valid.

8. From the above rival contentions, the following points arise for determination:-

(1) Whether the writ petition is liable to be dismissed on the ground of laches?
(2) Whether the appellant-Corporation would be disentitled to question the grant of variation inasmuch as there was no objection filed pursuant to the notification issued under Section 57(3) of the old Act?
(3) Whether the grant of variation under the old Act is saved consequent upon the enactment of the Tamil Nadu Act 41 of 1992?
(4) Whether the grant of variation in the facts and circumstances of the case would amount to the grant of fresh permit? If so, whether the variation could be granted on a scheme route?

9. Point No.1: It cannot be a general rule of law that in all cases the delay would be of pivotal importance to deny the relief under Article 226 of the Constitution of India. The issue of delay is only a rule of practice and not to become a rule of limitation. Of course, utmost expedition is a sine quo non for a relief under Article 226 of the Constitution of India. In the normal course, the party approaches the Court must be diligent and must explain the delay to the satisfaction of the Court. The power of the Court to entertain the writ petition even if there is considerable delay is well recognised. However, the discretion that could be exercised by the Court depends upon the facts and circumstances of each case. The discretion must be exercised in favour of the State or the State Transport Corporation, as in this case, if the public interest so warrants. That apart, in case of challenge to any order on the ground that such order is against the provisions of the statute, the challenge cannot be rejected solely on the ground of delay.

10. Keeping the above general principles in mind, the issue relating to the delay must be considered. A part of the route in question overlaps the scheme route and the appellant-Corporation is operating on the said route. The grant of permit or variation is not permissible on such scheme route. The route also is covered by inter-state agreement both by the

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State of Tamil Nadu and the State of Andhra Pradesh. In the inter-state agreement only 48 singles were included and the grant of two singles to the operator had resulted in addition to the above 48 singles. Hence the two additional singles with one more vehicle was outside the scope of the inter-state agreement. Of course, the variation was granted under the old Act by the State Transport Authority, Andhra Pradesh and the same could not be implemented due to the judgment of the Supreme Court in Pandiyan Roadways case (supra) holding that in the scheme route, no permit could be granted. The variation granted by the State Transport Authority, Andhra Pradesh would be operational only when it is countersigned by the State Transport Authority, Tamil Nadu, as the route in question is covered by the inter-state agreement. By the time the said application came to be considered, the new Act came into force with effect from 1.7.89. Of course, the application was rejected by the State Transport Authority, Tamil Nadu on 26.4.90, but was allowed by the State Transport Appellate Tribunal on 5.12.90. Even thereafter, the order of the Appellate Tribunal was not implemented, till the order passed by the State Transport Authority granting counter-signature was made on 23.8.2000. In effect, the variation granted by the State Transport Authority, Andhra Pradesh on 25.6.85 was implemented only on 23.8.2000, and that will be the relevant date to find out the delay to approach the Court. Of course, Mr.M.Palani, the learned counsel for the operator has submitted that inasmuch as Pattukkottai Azhagiri Transport Corporation Ltd., did not make any objection under Section 57(3) of the old Act, the appellant-Corporation, which stepped into the shoes of Pattukkottai Transport Corporation Ltd., cannot question the variation. We would be discussing the said contention while we answer the point no.2, but for the purpose of consideration of the delay, though Pattukkottai Azhagiri Transport Corporation Ltd., could have made objection for the grant of variation, that would not be a bar for the appellant to question the proceedings for counter-signature by the State Transport Authority, Tamil Nadu. As far as the appellant is concerned, admittedly, it came into existence in the year 1992 and is operating on the scheme route in question. The order of the State Transport Appellate Tribunal dated 5.12.90 was not made known to the appellant, presumably, as the appellant was not a party before the Tribunal. Only when the counter-signature was granted to the operator by the State Transport Authority, Tamil Nadu on 23.8.2000, the appellant came to know of the variation and as such, the counter-signature was in fact granted as per the order of the Appellate Tribunal dated 5.12.90. Only under the said circumstance, the writ petition came to be filed in the year 2000. In this context, it must be noticed that the order of the State Transport Authority, Tamil Nadu granting counter-signature was made on 23.8.2000 and the writ petition was filed on 28.8.2000, within a period of five days. As the law is settled as to the power of the Court to entertain a writ petition under Article 226 even in case of delay by taking note of the public interest, we are of the considered view that the writ petition ought not to have been rejected on the ground of delay. Further, the writ petition questions the legality of the very grant of variation itself. Mr.M.Palani, however, would rely upon the judgment of the Supreme Court in State of M.P. and others v. Nandlal Jaiswal and others reported in AIR 1987 SC 251. He drew our attention particularly to paragraph 23 to contend that where there is inordinate and unexplained delay and the third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action

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complained of is unconstitutional or illegal. To appreciate the law declared by the Supreme Court in that judgment, the relevant paragraph needs the following extraction:-

> "Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.
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> Of course, this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

In fact, to apply the principle referred to by the learned counsel for the operator, there must be atleast two pre-conditions namely, (1) the delay must be inordinate and unexplained; and (2) by virtue of inaction of a person to approach the Court in time and the third party rights are created during the intervening period, and the entertaining of the writ

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petition would have an effect of inflicting not only hardship and inconvenience but also injustice to third parties. In our opinion, the ratio relied upon by the learned counsel for the operator is not applicable to the facts of this case, as we have held firstly that there is no delay in approaching the Court. Secondly, even if there is delay, the same has been properly explained and thirdly, by the grant of variation, the appellant is aggrieved and the hardship, if any, caused to the operator is irrelevant, as the very benefit of counter-signature was on the basis of the grant of variation that was impermissible in a scheme route. Hence, we hold that the writ petition filed by the Corporation should be entertained and disposed of on merits.

11. Point no.2: As far as the contention as to whether the appellant-Corporation would be disentitled to question the grant of variation, much reliance was placed on sub-sections (3) and (4) of Section 57 of the old Act. Section 57 relates to the procedure in applying for and granting permits. In terms of sub-section (3) of Section 57, on receipt of an application for stage carriage permit or a public carrier's permit, the Regional Transport Authority, among other things, shall publish the application or the substance thereof in the prescribed manner together with a notice specifying a date before which representations in connection therewith may be submitted and the date not being less than thirty days from such publication under sub-section (4) of Section 57. No representation in connection with the application referred to under sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation. In our considered view, under sub-section (4) of Section 57, it is mandatory for the authority to consider the objections, of course, made in terms of sub-section (3) of Section 57. As a necessary corollary, if the objections are not made in accordance with sub-section (3) of Section 57, such objections need not be considered. That does not mean that the appellant-Corporation, which was aggrieved by the grant of counter-signature, cannot question the order of the State Transport Appellate Tribunal which was the basis for the grant of counter-signature. Grant of variation under sub-section (3) by the State Transport Authority, Andhra Pradesh by itself would not become final till the counter-signature is made by the State Transport Authority, Tamil Nadu, and the appellant-Corporation would be certainly entitled to question the counter-signature in spite of the fact that there was no objection made in writing to the authority in terms of sub-section (4) of Section 57. In fact even in case when there are no objections for the grant of variation, there cannot be any vested right on the operator to seek for variation solely on the ground that there were no objections and the decision as to the variation could be taken by the authority independently, but the only requirement is that the said decision must be supported by reasons. Further, the issue in question is entirely not in respect of the variation granted by the State Transport Authority, Andhra Pradesh, but the order of the State Transport Appellate Tribunal in directing the State Transport Authority, Tamil Nadu to grant counter-signature. The issue must be approached keeping in mind that unless the variation granted by the State Transport Authority, Andhra Pradesh is counter-signed by the State Transport Authority, Tamil Nadu, the variation is not valid and consequently cannot be implemented. Even though the application for grant of counter-

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signature was made under the old Act, in view of the new Act had come into force on 1.7.89 and the Appellate Tribunal had directed the State Transport Authority, Tamil Nadu to grant the counter-signature on 5.12.90, the power to grant counter-signature must be traced to Section 72 of the new Act, which relates to the grant of stage carriage permit. Any variation granted could be valid only after the counter-signature is made by the State Transport Authority, Tamil Nadu under Section 88 of the new Act. Hence we hold that the appellant-Corporation can maintain the challenge to the order of the State Transport Appellate Tribunal, even though no objection was filed by the Pattukkottai Transport Corporation Ltd., under Section 57(4) of the old Act.

12. Point No.3: Much was argued by Mr.M.Palani, the learned counsel as to the validation of the variation granted under the old Act in view of the enactment of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Tamil Nadu Act 41 of 1992). There is no dispute as to the validity of the provisions of the Tamil Nadu Act 41 of 1992. The counsel would rely upon Section 10 of the said Act, which reads as under:-

> "10. Validation.-- Notwithstanding anything contained in Chapter V or VI including Section 98 of the Motor Vehicles Act, all proceedings taken for the grant of and all orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment of the route or routes specified in a stage carriage permit during the period commencing on the 4th day of June 1976 and ending with the date of the publication of this Act in the Tamil Nadu Government Gazette, shall, for all purposes be deemed to be and to have always been taken or passed in accordance with the provisions of this Act as if this Act had been in force at all material times."

A plain reading of the said section would show that only such of those proceedings taken for the grant of and all orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment of the variation specified in a stage carriage permit during the period commencing on 4.6.76 and ending with the date of application of the Act granted by the State Transport Authority, Tamil Nadu shall be deemed to be and to have always been taken or passed in accordance with the provisions of the Act. Factually the variation was granted by the State Transport Authority, Andhra Pradesh. By the provision of Section 10 of the Tamil Nadu Act 41 of 1992, only such of those proceedings taken for the grant or orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment granted under the old Act by the Transport Authorities of Tamil Nadu are only saved. The said provision cannot be extended to either grant of permit or variation, modification, extension or curtailment granted by the State Transport Authority, Andhra Pradesh, in view of the applicability of the Act with reference to its territorial jurisdiction. In fact, Section 6(1) of the Act 41 of 1992 contemplates that notwithstanding anything contained in the Motor Vehicles Act or in an approved scheme, the Regional Transport Authority may, on an application made in accordance with the rules made in this behalf, renew the permit to

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a small operator to ply his stage carriage on the entire route covered by the approved scheme or on such portion of the route covered by the approved scheme and for such period and subject to such terms and conditions which may be in respect of matters specified in sub-section (2) of Section 72 of the new Act. This provision for renewal of permit to small operator entitling the small operator to ply the stage carriage on the route covered by the approved scheme cannot be exercised by the State Transport Authority, Andhra Pradesh, as it is intended and made applicable only to the State Transport Authority, Tamil Nadu. In such case, the grant of variation by the State Transport Authority, Andhra Pradesh cannot be held to be saved under the provisions of Section 10 read with Section 6 of the Act 41 of 1992. Hence the contention of the learned counsel for the operator that by Act 41 of 1992 the variation granted by the State Transport Authority, Andhra Pradesh is saved cannot be accepted and is liable to be rejected.

13. Point no.4: For the purpose of deciding the issue as to whether the grant of variation would amount to the grant of fresh permit, a deep survey of the following judgments of the Supreme Court is necessary. The issue as to whether the grant of variation would amount to the grant of fresh permit came up for consideration before the Supreme Court in Karnataka State Road Transport Corporation v. B.A.Jayaram AIR 1984 SC 790. While considering the scope of Section 57(8) of the old Act, the Supreme Court has held as follows:-

> "Assuming, therefore, that an application for variation of the conditions of a permit referred to in sub-section (8) of Section 57 is to be deemed by a fiction of law to be an application for the grant of a new permit, the question to which we must address ourselves is for what purpose is such an application for variation deemed to be an application for grant of a new permit. Reading sub-sections (3) to (8) of Section 57 as a whole, it is clear that the only purpose is to apply to such an application for variation the procedure prescribed by sub-sections (3) to (7) of Section 57 and not for the purpose of providing that when the application for variation is granted, the permit so varied would be deemed to be a new permit. If a permit so varied were to be deemed to be a new permit, the result would be anomalous."

14. The same issue came up for consideration before a Constitution Bench of the Supreme Court in M/s Adarsh Travels Bus Service and another v. State of U.P. and others reported in AIR 1986 SC 319. The question arose as to the right of the private operators for grant of permit on a scheme route. In paragraph 6 of the judgment, the Supreme Court has held as follows:-

> "A careful and diligent perusal of S.68C, S.68D(3) and S.68FF in the light of the definition of the expression 'route' in S.2(28A) appears to make it manifestly clear that once a scheme is published under S.68D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport

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Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area."

15. The very same issue again came up for consideration before a two Judges Bench of the Supreme Court in R.Raghuram v. P.Jayarama Naidu and others reported in AIR 1990 SC 412. The Supreme Court, considering the decision in M/s Adharsh Travels case, held that the judgment in Karnataka State Road Transport Corporation case, AIR 1984 SC 790 must be deemed to have been overruled in M/s Adharsh Travels case. In fact the Supreme Court has held in paragraph 3, after referring to the decision in M/s Adarsh Travels case, as follows:-

"Even when the scheme provides that an existing operator is exempted from the operation of the scheme it only means that he can continue to operate his services with the existing number of trips on the date on which the scheme is published and it does authorise him to apply for a variation of his permit so that he can increase the number of trips on the overlapping portion of the notified route thus increasing the burden of private operation of vehicles on the notified route in question. The variation authorising increasing the number of trips in fact amounts to granting of a fresh permit to run one more stage carriage service doing one round trip on the notified route and that would be in violation of the scheme itself because the scheme protects only the number of trips which were being operated at the time of its publication."

In view of the judgment of the Supreme Court in Raghuram's case, which is later in point of time, it must be held that the grant of variation would amount to the grant of fresh permit. In fact, a Division Bench of this Court in the judgment in Tvl.Jeeva Transport Corporation Ltd., Erode rep.by its Managing Director v. The Regional Transport Authority, Salem and others reported in AIR 1998 Madras 292 has held as follows:-

"Thus, we are of the view that the variation of the conditions of permit by inclusion of the additional vehicle to run additional service granted to the third respondent in each one of these appeals is clearly without jurisdiction as it is prohibited by Section 104 (1) of the Act read with the provisions of the scheme. As such, the order of the State Transport Appellate Tribunal cannot be sustained. In such a case, the question of applying Rule 208 of the Tamil Nadu Motor Vehicles Rules as held by the learned single Judge, does not arise."

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16. A Full Bench of the Andhra Pradesh High Court had an occasion to consider the same question in the judgment in L.Raghuraman v. State Transport Appellate Tribunal, Andhra Pradesh reported in 2001 (5) ALT 487, and has held that the variation of conditions of permits for grant of one more vehicle and six trips, by legal fiction, would amount to grant of new permits.

17. A similar question came up for consideration before a Division Bench of the Andhra Pradesh High Court in the judgment in B.Satyam v. Secretary, State Transport Authority, Andhra Pradesh reported in AIR 1994 AP 327. That case also related to a stage carriage permit on an inter-state route and on an approved scheme. After referring to the judgment of the Supreme Court in Raghuram's case, the Division Bench held that the variation of existing permit allowing additional trips with additional vehicle on the very same notified route was impermissible, as such variation would amount to fresh permit. Mr.M.Palani, however, submitted that the judgment in Raghuram's case did not decide the issue except observing that the decision in Karnataka State Road Transport Corporation case is deemed to have been overruled and observing so, had only referred for a decision by the Constitution Bench and a referral judgment is not a decision or law declared by the Supreme Court. He would also submit that ultimately the Special Leave Petition was dismissed for non-prosecution. He also relied upon the judgment of the Supreme Court in Karnataka State Road Transport Corporation, Bangalore and others v. Karnataka State Transport Authority, Bangalore and others reported in AIR 1987 SC 711 and contended that in the said judgment it has been held that the Transport Authority can grant variation of the conditions of inter-state stage carriage by increasing the number of trips operated on the inter-state route overlapping the notified route under the scheme. Hence the learned counsel contended that the judgment in Raghuram's case is only an observation without there being any decision or law declared by the Supreme Court, the judgments in Karnataka State Road Transport Corporation case reported in AIR 1984 SC 790 and AIR 1987 SC 711 should be held to be the law operating on the field. We are afraid to accept the said contention. That was a case where the Karnataka State Road Corporation questioned the variation of the conditions of permit held by the individual operators on an inter-state route located within the State under the Kolar Pocket Scheme framed under Chapter IV-A of the Motor Vehicles Act. The said scheme was modified later on by providing "The State Transport Undertaking will operate the services on all routes to the complete exclusion of other persons except the following .... and the operation of services by the permit holders who have already been granted permits by the Transport Authority on the date of publication of the modified scheme on the inter-state routes which are included in the inter-state agreement of any other State provided that the operators on such routes shall not be entitled to pick up or set down passengers in such portion of the routes which overlaps on any portion of the notified routes". While applying the scheme, the Supreme Court held in paragraph 4 as follows:-

> "As noticed earlier, the scheme authorises the continued operation of the services by the existing permit holders subject to corridor restrictions. Having heard learned counsel, we are of the view that the condition imposed in the scheme has not been violated. There is nothing

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said in the case of Adarsh Travels which would support the appellant in the facts of the present case. Learned counsel also made grievance by alleging non-compliance of the provisions of the Motor Vehicles Act in the matter of granting extension of trips. The order of the State Transport Authority indicates that parties were heard and prima facie there was compliance of the requirements of the provisions of S.57(8) of the Act. Defects, if any, in the matter of extension of trips could be agitated before the Appellate forum under the Act. Before the High Court the main contention was confined to the argument relating to plying in contravention of the law based upon the scheme. We do not find any merit in the appeals and they are dismissed with costs."

That judgment was based on the very scheme itself. Factually in the case on hand, there is no such provision for grant of variation under the scheme. Secondly, the variation was granted outside the scope of the inter-state agreement and as a necessary corollary, the validity of the variation should be tested by taking note of the scheme route. Though Raghuram's case was referred to a Constitution Bench, there is no decision by the Constitution Bench on the issue as of now. In fact the Special Leave Petition was dismissed for default. The contention that Raghuram's case is only a referral judgment and not a decision in law is unacceptable for the simple reason that the findings in the judgment are not set aside so far and there is no decision of the Supreme Court taking a contrary view after the said judgment. Hence, in our considered view, the variation granted to the operator amounts to fresh permit. Consequently, the next question falls for our consideration is as to whether a permit can be issued in a route covered by an approved scheme. The scheme in question was notified on 13.2.74 covering the route Madras to Tirupathi. After the new Act came into force with effect from 1.7.89, in terms of Section 104 of the Act, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit in respect of a notified area or route except in accordance with the provisions of the scheme. Admittedly, the approved scheme does not provide for the grant of permit. As the counter-signature was considered after the new Act has come into force, the State Transport Authority would have no power to grant variation in the absence of a provision in the scheme. Hence the order of the State Transport Appellate Tribunal directing the State Transport Authority, Tamil Nadu to grant counter-signature is contrary to the provisions and therefore is bad in law. Even sub-section (4) of Section 6 of the Act 41 of 1992 contemplates that "notwithstanding anything contained in this Act, no new permit shall be granted under this Act to any person on any route covered by the approved scheme". In view of the above specific provision, the grant of counter-signature by the State Transport Authority, Tamil Nadu is impermissible.

18. In view of the above, we are of the considered view that the order the State Transport Appellate Tribunal directing the State Transport Authority, Tamil Nadu to grant counter-signature is illegal and consequently, the counter-signature granted on the basis of the said order also is illegal and cannot be given effect to. Accordingly, this point is

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also answered in favour of the appellant. In view of the above discussions, we are not inclined to go into the argument relating to the grant of variation for one more vehicle with additional singles on the same route.

19. For all the above reasons, the appellant-Corporation is entitled to succeed in the appeal. Accordingly, the impugned order is set aside and the writ appeal is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ss

To
1. The State Transport Authority
   Chepauk, Chennai 600 005

2. The State Transport Appellate
   Tribunal, Chennai

+ 1 CC To Mr.M.Mohan, Advocate SR NO. 48071
+ 1 CC To Mr. M.Palani, Advocate SR NO. 47931
+ 1 CC to the Government Pleader SR NO 48254

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